

ELLIOTT & ELLIOTT, P.A.
ATTORNEYS AT LAW
1508 Lady Street
COLUMBIA, SOUTH CAROLINA 29201
selliott@elliottlaw.us

SCOTT ELLIOTT

TELEPHONE (803) 771-0555
FACSIMILE (803) 771-8010

February 2, 2015

VIA E-FILING

Jocelyn Boyd, Esquire
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: B2 Holdings, LLC, Complainant/Petitioner v. Carolina Water Service, Inc.
Defendant/Respondent
Docket No. 2014-481-WS

Dear Ms. Boyd:

Enclosed for filing please find an Answer and Motion to Dismiss filed on behalf of Carolina Water Service, Inc. and Certificate of Service in connection with the above-referenced matter. By copy of this letter I am serving all parties of record.

If you or counsel has questions, please feel free to contact me.

Sincerely,

Elliott & Elliott, P.A.



Scott Elliott

SE/lbk

Enclosures

cc: All Parties of Record w/enc.


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-481-WS

IN RE:	B2 Holdings, LLC)	
	Complainant/Petitioner)	
)	
	v.)	
)	
	Carolina Water Service, Inc.)	ANSWER OF
	Defendant/Respondent)	DEFENDANT/RESPONDENT
			CAROLINA WATER SERVICE, INC.

TO: B2 HOLDINGS, LLC

The Defendant/Respondent Carolina Water Service, Inc. ("Carolina Water") in answering the Complaint herein, would allege as follows:

FOR FIRST DEFENSE

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1. Each and every allegation of the Complaint not hereinafter admitted, qualified, or explained is denied and strict proof demanded thereof.
 2. That the Defendant/Respondent admits that the Complainant/Petitioner B2 Holdings, LLC is a limited liability company organized under the laws of the State of South Carolina; that in further answer to the allegations of the Complaint, the Defendant/Respondent would allege that it is a corporation organized under the laws of the State of Delaware and is certificated by the South Carolina Public Service Commission ("Commission") as a public utility to provide sanitary sewer service.
 3. That the Defendant/Respondent admits that it provides sanitary sewer service to the Complainant/Petitioner herein.

4. That the Defendant/Respondent admits so much of the allegations of the Complaint that it charged the Complainant/Petitioner for sanitary sewer service based on 3 SFEs from January 31, 2013 to October 2013; that as of October 2014 it is now billing the Complainant/Petitioner at the rate of 9.4 SFEs; and that it has billed the Complainant/Petitioner the amount of \$1,140.00 for undercharged sewer service for a six (6) months period.

8. That the Defendant/Respondent expressly denies that billing for sanitary sewer service should be based on water consumption and specifically denies that the Complainant/Petitioner's account should be billed based on 1.5 SFEs; that in further answer to the allegations of the Complaint, the Defendant/Respondent would allege that the Complainant/Petitioner's water usage is not relevant to the rate applicable to the Complainant/Petitioner's commercial sanitary sewer service

9. That the Defendant/Respondent expressly denies that it should be required to credit \$1,140.00 to the Complainant/Petitioner's account.

5. That in further answer to the allegations of the Complaint, the Defendant/Respondent would allege that it is billing the Complainant/Petitioner for sanitary sewer service pursuant to its tariff authorized by the Commission in Order No. 2014-207; that the billing in the amount of \$1,140.00 as authorized by S.C. Code Ann. Reg. 103-533.

6. That in further answer to the allegations of the Complaint, the Defendant/Respondent would allege that in February of 2013, the Complainant/Petitioner filed a complaint assigned Docket No. 2013-71-WS challenging the Defendant/Respondent's commercial sanitary sewer service rate seeking to have its sewer service rate based on water usage; that the Complaint in Docket No. 2013-71-WS was dismissed by Commission Order No. 2014- 765 holding that the matter was more suited to a rate case proceeding; that the Complainant/Petitioner failed to intervene the Defendant/Respondent's 2013 rate case proceeding.

7. That by September of 2013, while Docket No. 2013-71-WS was pending, the Complainant/Petitioner opened a restaurant in the premises served by the Defendant/Respondent increasing its sewer service from a rate of 3 SFEs to a rate of 9.4 SFEs; that only after the Commission issued Order No. 2014-765 in September of 2014 dismissing the Complaint in Docket No. 2013-71-WS, did the Defendant/Respondent begin billing the Complainant/Petitioner for the additional 6.4 SFEs for the restaurant, and pursuant to S.C. Code Reg. 103-533 billed the Complainant/Petitioner for six months of undercharged service in the amount of \$1140.00.

8. That the Defendant/Respondent lacks sufficient information to form a belief as to the truth of the allegations of the Complaint with respect to customer service and therefore denies same.

9. The balance of the allegations of the Complaint are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

The Defendant/Respondent moves for an order of this Commission dismissing the complaint herein on the basis that the complaint fails to state facts sufficient to constitute a cause of action. The Defendant/Respondent has filed a formal motion concurrently herewith.

FOR A THIRD DEFENSE


The Defendant/Respondent moves for judgment on the pleadings on the basis that there is no issue of fact raised by the complaint that would entitle Complainant/Petitioner to judgment if resolved in the Complainant/Petitioner's favor. The Defendant/Respondent has filed a formal motion concurrently herewith.

WHEREFORE, having fully answered the Complaint herein, the Defendant/Respondent prays that same be dismissed with costs and for such other and further relief as is just and proper.



Scott Elliott
ELLIOTT & ELLIOTT, P.A.
1508 Lady Street
Columbia, SC 29201
803-771-0555

Attorney for Defendant/Respondent
Carolina Water Service, Inc.



Columbia, South Carolina
February 2, 2015

DOCKET NO. 2014-481-WS

MOTION TO DISMISS

BACKGROUND

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by Order No. 2014-207 filed March 4, 2014 in Docket No. 2013-275-W/S. The complaint requests the Commission to require Carolina Water to charge rates that are not authorized by Order No. 2014-207.

By way of background, B-2 Holdings, LLC filed a complaint against Carolina Water February 26, 2013 similarly challenging the manner in which Carolina Water's rates were designed. B-2 Holdings sought to have Carolina Water's sewer service rates based on water usage. In Docket No. 2013-71-WS, the Commission issued Order No. 2014-765 dismissing B-2 Holdings complaint holding that the matter of Carolina Water's rate design is better suited to a rate case proceeding and acknowledged that B2 Holdings was entitled to file a petition to intervene in Carolina Water's next rate case.

The Complaint herein alleges that the commercial sewer service rate charged B-2 Holdings is based on 9.4 SFEs, and that because the water usage of the commercial property in question is 14,000 gallons per month, B-2 Holdings contends that the rate ought to be based on 1.5 SFEs, an amount it contends is sufficient to cover the amount of sewage collected from the commercial property and treated by Carolina Water. The complaint does not allege that Carolina Water has miscalculated B-2 Holdings sewer service bills. Instead, the Complaint alleges that B-2 Holdings sewer service bills should be based on water usage. In addition, without stating a legal basis, the complaint seeks a credit of \$1140.00. The complaint alleges that Carolina Water increased the "collection fee from 3 SFEs to 9.4 SFEs...." The Defendant/Respondent's answer explains that after B2 Holdings opened a restaurant at its premises during the pendency of the complaint in Docket No. 2013-71-WS

for which it was not billed, the Defendant/Respondent billed the Complainant/Petitioner for 6 months of the undercharged amount.

ARGUMENT

The Complaint fails to state facts sufficient to constitute a cause of action. The Complaint does not allege any fact demonstrating that Carolina Water has done anything prohibited by Commission Orders or regulation and thus, the Complainant/Petitioner fails to allege that Carolina Water has engaged in any conduct that would entitle the Complainant/Petitioner to relief. To the contrary, Carolina Water's rates applicable to the Complainant/Petitioner's premises conform in every respect with its Commission approved rate design.

The Complainant/Petitioner seeks now to collaterally attack the rate design approved in Order No. 2014-207 (as well as previous Commission orders approving rate design for Carolina Water based upon DHEC guidelines). However, the Complainant/Petitioner, as a Carolina Water customer, had actual and constructive notice of the utility's 2013 rate application but failed to intervene to challenge the rate design requested and approved in Order No. 2014-207. The Complainant/Petitioner is familiar with Commission practice and was certainly in a position to contest Carolina Water's rate design and to propose a rate design of its own. Having failed to do so, the Complainant/Petitioner cannot be permitted to collaterally attack rates that are valid on their face.

Further, Carolina Water's rates are in all respects just and reasonable and enforceable. The Commission acted within its discretion to approve Carolina Water's rate design based on the DHEC Contributory Unit Wastewater Loading guidelines set out in Appendix a 25 S.C.

Code Regs. 61-67. In establishing rates it is incumbent to fix rates which fairly distribute the revenue requirements of the utility. See *Seabrook Island Property Owners Association v. S.C. Public Service Commission*, 303 S.C. 493, 499, 401 S.E.2d 672, 675 (1991). The Commission has determined that fairness with respect to the distribution of a utility's revenue requirement is subject to the requirement that it be based upon some objective and measureable framework. See *Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 113-114, 708 S.E. 2d 755, 764-765 (2011). The Supreme Court has approved the Commission's use of single family equivalents in the rate design for a sewer utility. *Seabrook Island Property Owners Association v. South Carolina Public Service Commission, supra*. The imposition of flat rates on commercial customers based on equivalency established under DHEC guidelines found in Appendix A to R. 61-67 is both objective and measurable in that the rate design treats similarly situated commercial customers uniformly while recognizing that differences exist and pollutant strength of wastewater and the volume of wastewater flow. Moreover, the DHEC guidelines recognize that differences exist in the pollutant strength of wastewater and volume of wastewater flow between commercial and residential customers and accounts for those differences. See Order No. 2013-660 in Docket No. 2013-42-S.

In addition, the identical issues between these parties raised by the allegations of the complaint herein were finally resolved by Order No. 2014-765 in Docket No. 2013-71-WS. The complaint is barred by the doctrine of res judicata. See *Hilton Head Center of South Carolina, Inc. v. The Public Service Commission of South Carolina and Hilton Head Plantation Utilities, Inc.*, 294 S.C. 9, 362 S.E.2d 176 (1987).

The Complainant/Petitioner seeks the ability to pay for a service received and to be received at a rate other than the previously approved rate in Order No. 2014-207. The relief proposed by the Complaint constitutes retroactive rate making and cannot as a matter of law be granted by the Commission. See *SCE&G Co. v. Public Service Commission*, 275 S.C. 487, 272 S.E.2d 793 (1980) and S.C. Code Ann. §58-5-290.

The Complainant/Petitioner seeks a credit of \$1140.00. The complaint simply alleges that after increasing the sewer service bill from 3 SFEs to 9.4 SFEs, Carolina Water charged B-2 Holdings \$1140 for the undercharged amount for the previous 6 month's service. The Complainant/Petitioner offers no factual or legal basis to support its claim for relief and for this reason, the complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

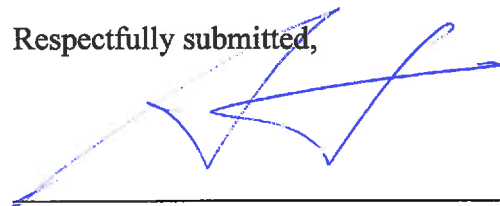
As is apparent from the pleadings, the Complainant/Petitioner opened a restaurant on the premises served by Carolina Water during the pendency of Docket No. 2013-71-WS. Consequently, after Order No. 2014-765 was issued, Carolina Water increased the Complainant/Petitioner's billing from 3 SFEs to 9.4 SFEs. Carolina Water is permitted to charge the Complainant for 6 months of undercharged sewer service consistent with the provisions of S.C. Code Reg. 103-533. In a motion for judgment on the pleadings, the well pleaded allegations of the complaint are deemed admitted. However, for the purposed of the motion, inferences and conclusions of law are not deemed admitted. *Russell v. City of Columbia*, 301 S.C 117, 390 S.E.2d 463 (Ct. App.. 1989). Accepting the allegations of the complaint as true, the Complainant/Petitioner has failed to allege facts entitling it to

judgment against the Defendant/Respondent. Accordingly, Carolina Water is entitled to judgment on the pleadings.

CONCLUSION

For the foregoing reasons, the Defendant respectfully request that the Complaint be dismissed.

Respectfully submitted,



Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
Phone: (803) 771-0555
Fax: (803) 771-8010
Email: selliott@elliottlaw.us

Attorney for Defendant/Respondent Carolina
Water Service, Inc.

Columbia, South Carolina
February 2, 2015

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

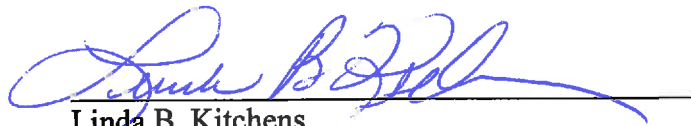
RE: B2 Holdings, LLC, Complainant/Petitioner v. Carolina
Water Service, Inc., Defendant/Respondent
Docket No. 2014-481-WS

PARTIES SERVED: Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Laura P. Valtorta, Esquire
903 Calhoun Street
Columbia, SC 29201

PLEADINGS: Answer
Motion to Dismiss

February 2, 2015



Linda B. Kitchens
Legal Assistant